

No. 12,507

IN THE

United States Court of Appeals  
For the Ninth Circuit

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HEINRICH ROEDEL,

*Appellant,*

vs.

UNITED STATES OF AMERICA,

*Appellee.*

BRIEF FOR APPELLEE.

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PAUL P. O'BRIEN



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**JURISDICTIONAL STATEMENT.**

This is an appeal from an order of the United States District Court for the Northern District of California, Southern Division, hereinafter called the "Court below", denying appellant's motion to vacate the judgment and sentence heretofore imposed against him (Tr. 65). The Court below had jurisdiction of the motion to correct its judgment and sentence under the provisions of Title 28 U.S.C.A. Section 2255. This Honorable Court has jurisdiction to review the order of the Court below denying the motion herein under authority of said Title 28 U.S.C.A. Section 2255.

**ORDER BELOW.**

The order of the Court below, denying appellant's motion to vacate judgment and sentence, reads as follows:

"Inasmuch as the motion of the petitioner filed January 6, 1950, and the files and records of the case conclusively show that the petitioner is entitled to no relief, his motion to vacate judgment and sentence is hereby denied.

Dated: January 9, 1950.

/s/LOUIS GOODMAN,  
U. S. District Judge.

[Endorsed]: Filed January 10, 1950." (Tr. 65.)

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**STATEMENT OF THE CASE.**

Appellant, a German alien, was convicted on December 19, 1942, after trial by jury, of attempted sabotage in time of war,

Title 50 *U.S.C.A.* Section 102.

Thereafter, on appeal, his conviction was affirmed by this Honorable Court,

*Roedel v. United States*, 145 F. (2d) 819.

In the District Court and before this Honorable Court the appellant was represented by appointed counsel. Certiorari was not sought in the Supreme Court of the United States until after the time to file a petition for such a remedy had expired. Appellant blames counsel, contending that he gave him wrong advice as to the time in which a petition for writ of certiorari

could be filed in the Supreme Court. It is this contention which appellant unsuccessfully urged in the Court below in his motion to vacate the judgment and sentence, and which he now makes as his sole contention in this appeal. It might be added here that in his statement of points on appeal, appellant also attacked the sufficiency of the indictment, the sufficiency of the evidence, and the admissibility of certain evidence in the trial Court, but in his brief, as above indicated, he now relies solely on the contention that he was deprived of his right to file a petition for a writ of certiorari in the Supreme Court.

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### QUESTION.

Is appellant entitled to relief by way of motion to vacate judgment and sentence?

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### CONTENTION OF APPELLEE.

The answer to the above stated question is: No.

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### ARGUMENT.

The record of the trial Court and the record on appeal clearly indicate that distinguished counsel now deceased, James B. O'Connor, Esq., gave the defendant diligent and effective representation. Appellant now seeks to cast reflection upon his counsel, who, of

course, can now not speak for himself. In any event, appellant can cite no authority for the novel proposition which he advances. None of the cases which he cites are in point. The appellant's argument being so palpably without merit, appellee believes that it need say no more than did the Court below in its decision, which it now adopts *in toto* as its argument in this appeal.

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### CONCLUSION.

In view of the foregoing, it is respectfully urged that the order of the Court below denying appellant's motion to vacate judgment and sentence is correct, and should be affirmed.

Dated, San Francisco, California,  
June 23, 1950.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

JOSEPH KARESH,

Assistant United States Attorney,

*Attorneys for Appellee.*